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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Loo Tze Ming, an individual from Malaysia

No. 2:22-CV-02042-SPL

Plaintiff,

V.

Fitness Anywhere LLC,

Defendant

JFXD TRX ACQ LLC, d/b/a TRX, a Florida limited liability company

Plaintiff.

V.

<trx.com>, a domain name.

and

Loo Tze Ming, an individual from Malaysia

Defendant.

No. 2:23-CV-02330-PHX-RQS

**LOO TZE MING'S REPLY IN
SUPPORT OF HIS MOTION TO
CONSOLIDATE CASE NO. 2:22-CV-
02042-SPL AND CASE NO. 2:23-CV-
02330-PHX-ROS**

Defendant Loo Tze Ming (“Defendant”), through counsel, submits his Reply in Support of his Motion to Consolidate Case No. 2:22-CV-02042-SPL (“the First Action”) and Case No. 2:23-CV-02330-PHX-ROS (“the Second Action”) (hereinafter “Mot.” or Motion”).

Plaintiff JFXD TRX ACQ LLC (“JFXD”)’s opposition (hereinafter “Opp. or “Opposition”) to consolidation is little more than name calling and table pounding while

1 avoiding the key issue that connects these two cases—that two other parties have attempted to
 2 claim to Ming’s <trx.com> domain name. It makes no sense for Ming, on one hand, to have
 3 to wait to clear title to his property from Fitness Anywhere LLC (“Fitness Anywhere”), while,
 4 on the other hand, an alleged “successor” to Fitness Anywhere seeks to take it out from under
 5 him. JXFD’s case was transferred to this Court for the purpose of resolving the dispute fully.

6 To avoid the core issue that this dispute is over the same <trx.com> domain name in both
 7 cases, JXFD’s scattershot Opposition touches numerous irrelevant issues, such as
 8 jurisdictional discovery that was denied in the Virginia Court (Opp. at 4) or attempts to engage
 9 in “judge shopping” for its case (*Id.*). Ming will respectfully sidestep these extraneous issues
 10 in its Reply, focusing instead on the issues that directly affect the Motion. Ming reserves the
 11 right to respond to these superfluous issues should they become relevant.

12

**13 I. CONSOLIDATION OF THE CASES IS BOTH PROPER AND
 14 BENEFICIAL**

15 The standard for consolidation is met by having two cases with the same transaction
 16 of Ming’s ownership of the <trx.com> domain, the same property, and the same questions
 17 of law under the ACPA. *See LRCiv* 42.1(a). JXFD’s Opposition does not actually
 18 challenge that the two cases present identical factual and legal issues that warrant
 19 consolidation. Instead, JXFD only retorts that Fitness Anywhere is in bankruptcy
 20 proceedings. Opp. at 5. What may happen in the future to one of the parties has no impact
 21 on the present question what would best serve “party economy or judicial economy.” *City*
 22 *of Phoenix v. First State Ins. Co.*, No. CV-15-00511-PHX-NVW, 2016 WL 4591906, at
 23 *20 (D. Ariz. Sept. 2, 2016), *aff’d*, No. 16-16767, 2018 WL 1616011 (9th Cir. Apr. 4,
 24 2018). Certainly, one consolidated action over the <trx.com> domain would be more
 25 economical for the Court and parties rather than two separate actions before two separate
 26 judges. The Virginia Court already rejected JXFD’s attempt to abuse the litigation process
 27 by filing suit in a different court while the action filed by Ming was pending in this Court.
 28

1 Conversely, JXFD has acknowledged the unavoidable overlap between the two
 2 actions as JXFD repeatedly references factual allegations and proceedings from First
 3 Action in its Opposition. It takes quite the mental gymnastics to argue there's no common
 4 issues between the First Action and Second Action, when JXFD, in turn, relies on
 5 allegations in the First Action to try supporting its claims in the Second Action. JXFD
 6 cannot avoid the common issues of fact and law between the First Action and Second
 7 Action, warranting consolidation.

8

9 **II. THE CALIFORNIA BANKRUPTCY COURT, NOT JXFD, SHOULD**
 10 **DETERMINE WHETHER TO PROCEED**

11 JXFD's Opposition conjectures widely about the future of Fitness Anywhere,
 12 making numerous unfounded declarations about what may happen to Fitness Anywhere's
 13 business. *See* Opp. at 2-3, 5. However, it is not for JXFD to determine the ultimate
 14 resolution of the bankruptcy proceeding. Given that JXFD has already acknowledged the
 15 proceedings had converted between Chapter 7 and Chapter 11, JXFD's predictions are pure
 16 conjecture, not fact.

17 Given that this Court has already found good cause just three days ago to continue
 18 the stay of the First Action in deference to the stay afforded by bankruptcy proceedings
 19 (Case No. CV-22-02042-PHX-SPL, Dkt. 25), it would be improper for this Court to subvert
 20 the same stay it has already found. Instead, should JXFD believe there was a basis for
 21 advancing beyond the stay, the proper mechanism would be for JXFD to seek lifting the
 22 stay from the bankruptcy court.

23

24 **III. OWNERSHIP OF THE "TRX" RIGHTS REMAINS UNSETTLED**

25 As previously highlighted by Ming, Fitness Anywhere brought the UDRP
 26 proceeding against the <trx.com> domain nearly two months after JXFD alleged it was
 27 assigned all rights in the TRX marks. *See* (Case No. CV-22-02042-PHX-SPL, Dkt. 72 at
 28 4). At no point does JFXD attempt to explain why Fitness Anywhere was able to file such

1 an action. JXFD also cites no precedent about its concerns of having “both the Chapter 11
2 seller and the Chapter 11 buyer in the same case” (Opp. at 4). Instead, questions over the
3 rights to the TRX marks appear to be problems of their own creation, not Ming. Certainly
4 Ming would be entitled to the same discovery, regardless of consolidation. JXFD’s
5 attempts to shield a dispute over a fundamental issue in these cases—any alleged trademark
6 rights in the TRX Marks—again warrant a single, consolidated proceeding.

7

8 IV. CONCLUSION

9 JXFD’s attempts to fling as much spaghetti to the wall as possible and see what may
10 stick. However, no amount of distraction can avoid the core concern that Ming is facing
11 two separate actions in this Court that directly impact Ming’s ownership of the <trx.com>
12 domain. The considerations of avoiding inconsistent rulings on the same property while
13 respecting the bankruptcy process is far more important than JXFD’s vague “hardship”
14 arguing against such need.

15 For the reasons stated above and its Motion, Ming respectfully requests that the
16 Court consolidate the two cases over the <trx.com> domain.

17

18 Dated this 18th day of December, 2023.

19 **BYCER & MARION**

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 18th day of December, 2023, I electronically filed the foregoing
3 with the Clerk of Court using the CM/ECF system, which will then send a notification of
4 such filing (NEF) to the following:

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